

**WRITTEN TESTIMONY IN OPPOSITION TO RAISED SENATE BILL NO. 1096
"AN ACT CONCERNING CHARTER SCHOOLS"**

By Mark J. Sommaruga, Esq.

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To Co-Chairs Fleischmann and Slossberg and the members of the Education Committee:

My name is **Mark J. Sommaruga**. I am a member of the law firm of Pullman & Comley, LLC, which represents numerous school districts and educational entities in Connecticut. I am the author of ***Understanding the Connecticut Freedom of Information Act and Access to Public Meetings and Records (4th Edition 2013)***. For purposes of full disclosure, I have been retained by Achievement First, Inc. (a private, non-profit charter school management organization) with regard to its defense of a complaint that is pending before the Connecticut Freedom of Information Commission ["FOIC"] involving a request by the Connecticut Education Association teachers' union for certain personnel and donor records. It is my understanding that there are at least three hearings scheduled before the FOIC this month concerning the issue of the applicability of Connecticut's Freedom of Information Act ["FOIA"] to charter school management organizations. For purposes of further disclosure, I am not being paid to provide this testimony, and this testimony does not reflect the views of my law firm but rather just myself.

I hereby speak in opposition to **Raised Senate Bill No. 1096, "An Act Concerning Charter Schools."** Specifically, I am concerned about the portion of this bill that would automatically subject charter school management organizations to the provisions of the FOIA.

Generally, the FOIA's open meetings and public records requirements apply to all public agencies. In addition, both the courts and the FOIC have construed the definition of "public agency" under the FOIA to also include the "functional equivalent" of a public agency. In determining whether an entity is such a functional equivalent of public agency that is covered by the FOIA, the courts and the FOIC have looked to the following factors: 1) whether the entity performs a governmental function; 2) the level of governmental funding; 3) the extent of government involvement or regulation; and 4) whether the entity was created by the government. *Board of Trustees of Woodstock Academy v. FOIC*, 181 Conn. 544 (1980).

This multi-factored test allows for an individualized consideration of whether a private entity (in whole or in part, or for specific functions) should be considered to be the functional equivalent of a public agency and thus covered by the FOIA's open meetings and public records requirement. This test has largely worked for 35 years. Sadly, the proposed bill (**Raised Senate Bill No. 1096**) would eliminate this individualized inquiry and replace it with a one size fits all approach, and subject just one group of private non-profit organizations to this new standard.

To be blunt, I happen to believe that Achievement First is a private non-profit organization that is not subject to the FOIA. However, the decision as to whether a charter school management organization is covered by the FOIA should be made by the FOIC, which is the agency with the most expertise on FOIA issues, along with the courts reviewing the FOIC's decisions. For example, it is possible that some entities that provide charter school management organization services may be determined to be covered by the FOIA's commands, while others will not be determined to be covered. It is even possible that the FOIC could find that an organization could be covered by the FOIA for certain functions, but not others. Instead of through a legislative diktat, these decisions should be made on a case by case basis. In addition, one group of non-profit organizations should not be singled out for disparate/disfavored treatment over other non-profit organizations. Finally, it is important to remember that while the issue of whether charter school management organizations are covered by the FOIA is being litigated and will be resolved through the FOIC (and judicial review) process, no one doubts that all charter schools themselves (including those that contract with a charter school management organization) are covered by the FOIA, and thus these schools' dealings (including their communications with charter school management organizations) are already subject to public disclosure in accordance with the FOIA. As such, **Raised Senate Bill No. 1096** may represent a solution in search of a problem, and should be rejected by this Committee.

Thank you for your time and consideration. If you should have any questions, please feel free to contact me (msommaruga@pullcom.com).